

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Robert Smith,

Petitioner,

v.

Case No. 1:07cv093

Warden, Warren Correctional Institution,

Judge Michael R. Barrett

Defendant.

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed September 6, 2007 (Doc. 8).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). No objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation to be correct. The Court further notes that the Petitioner has complied with the Magistrate Judge's recommendation that within thirty (30) days of the entry of the Report and Recommendation, Petitioner withdraw, in writing, his unexhausted claims for relief and to proceed to judgment on his remaining exhausted state court claims which Petitioner alleges in Ground Four of the instant action. The Court hereby **GRANTS** Petitioner's Motion to Proceed with Judgment (Doc. 9) filed by Petitioner on September 17, 2007.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge (Doc. 8) is hereby **ADOPTED**. Petitioner's Motion to Stay is **DENIED**;

Respondent's Motion to Dismiss (Doc. 6) is **DENIED**.

IT IS SO ORDERED.

bac

September 26, 2007

/s/ Michael R. Barrett
Michael R. Barrett, Judge
United States District Court